

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KELLI SUE GARCIA
6450 Camino del Parque
Carlsbad, CA 92009

Registered Nurse License No. 518281

Respondent

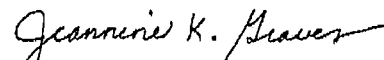
Case No. 2011-825

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **August 8, 2011.**

- IT IS SO ORDERED **August 8, 2011.**



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
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Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2011-825

12 **KELLI SUE GARCIA**
13 **6450 Camino del Parque**
14 **Carlsbad, CA 92009**

STIPULATED SURRENDER OF
LICENSE AND ORDER

15 **Registered Nurse License No. 518281**

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of
22 Registered Nursing. She brought this action solely in her official capacity and is represented in
23 this matter by Kamala D. Harris, Attorney General of the State of California, by Amanda Dodds,
24 Senior Legal Analyst.

25 2. Kelli Sue Garcia (Respondent) is representing herself in this proceeding and has
26 chosen not to exercise her right to be represented by counsel.

27 3. On or about December 21, 1995, the Board of Registered Nursing issued Registered
28 Nurse License No. 518281 to Respondent. The Registered Nurse License was in full force and

1 effect at all times relevant to the charges brought in Accusation No. 2011-825 and will expire on
2 September 30, 2011, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2011-825 was filed before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on April 6,
7 2011. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2011-825 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 2011-825. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
15 her own expense; the right to confront and cross-examine the witnesses against her; the right to
16 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
17 compel the attendance of witnesses and the production of documents; the right to reconsideration
18 and court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 2011-825, agrees that cause exists for discipline and hereby surrenders her Registered Nurse
25 License No. 518281 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation she enables the Board to issue
27 an order accepting the surrender of her Registered Nurse License without further process.

28 ///

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 518281, issued to Respondent Kelli Sue Garcia, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent.

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1 This stipulation constitutes a record of the discipline and shall become a part of
2 Respondent's license history with the Board.

3 2. Respondent shall lose all rights and privileges as a Registered Nurse in California as
4 of the effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board her pocket license and, if one
6 was issued, her wall certificate on or before the effective date of the Decision and Order.

7 4. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
9 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
10 effect at the time the petition is filed, and all of the charges and allegations contained in
11 Accusation No. 2011-825 shall be deemed to be true, correct and admitted by Respondent when
12 the Board determines whether to grant or deny the petition.

13 5. Should Respondent's license be reinstated, she shall pay to the Board costs associated
14 with its investigation and enforcement pursuant to Business and Professions Code section 125.3
15 in the amount of \$685.00. Respondent shall be permitted to pay these costs in a payment plan
16 approved by the Board. Nothing in this provision shall be construed to prohibit the Board from
17 reducing the amount of cost recovery upon reinstatement of the license.

18 6. If Respondent should ever apply or reapply for a new license or certification, or
19 petition for reinstatement of a license, by any other health care licensing agency in the State of
20 California, all of the charges and allegations contained in Accusation No. 2011-825 shall be
21 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
22 Issues or any other proceeding seeking to deny or restrict licensure.

23 7. Respondent shall not apply for licensure or petition for reinstatement for two (2)
24 years from the effective date of the Board of Registered Nursing's Decision and Order.

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DATED:

ENDORSEMENT

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Amanda Dodds
AMANDA DODDS
Senior Legal Analyst
Attorneys for Complainant

Exhibit A

Accusation No. 2011-825

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **KELLI SUE GARCIA**
6450 Camino del Parque
15 Carlsbad, CA 92009

16 **Registered Nurse License No. 518281**

17 Respondent.

Case No. **2011-825**

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about December 21, 1995, the Board of Registered Nursing issued Registered
24 Nurse License Number 518281 to Kelli Sue Garcia (Respondent). The Registered Nurse License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 September 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 2761 of the Code states:

6 The board may take disciplinary action against a certified or licensed nurse or
7 deny an application for a certificate or license for any of the following:

8 (a) Unprofessional conduct, which includes, but is not limited to, the
following:

9

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

12

13 10. Section 2762 of the Code states:

14 In addition to other acts constituting unprofessional conduct within the meaning
15 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
licensed under this chapter to do any of the following:

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17 (b) Use any controlled substance as defined in Division 10 (commencing with
18 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
19 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
20 practice authorized by his or her license.

21 (c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
22 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
23 the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COSTS

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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FIRST CAUSE FOR DISCIPLINE

(December 14, 2009 Criminal Conviction for DUI on October 13, 2009)

14. Respondent has subjected her license to disciplinary action under sections 490 and 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On or about December 14, 2009, in a criminal proceeding entitled *People of the State of California v. Kelli S. Garcia*, in San Diego County Superior Court, case number CN268768, Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a misdemeanor. Respondent admitted and the court found true the enhancement that Respondent's BAC was .15% or more, pursuant to Vehicle Code section 23578. An additional count of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about December 14, 2009, Respondent was sentenced to five years summary probation; ordered to serve one day in jail, with credit for one day; and complete five days in the Program Service Program. Respondent was further ordered to complete a First Conviction Program; attend a MADD victim impact panel; pay \$1,900 in fees, fines, and restitution; and comply with the terms of standard DUI probation.

c. The facts that led to the conviction are that on or about the morning of October 13, 2009, a patrol officer with the California Highway Patrol (CHP) was traveling on State Route 78 when he observed Respondent driving ahead of him in the number one lane. She was traveling at approximately 50 miles per hour, and drifted from side to side. After coming out of a right curve, Respondent nearly sideswiped the vehicle next to her when she drifted out of her lane. The CHP officer activated his emergency lights and Respondent slowed to 30 mph in the number one lane, and continued to weave from her lane into the center median. After using his lights, sirens, and loudspeaker, Respondent eventually pulled off the freeway and stopped. Upon contact with Respondent, the CHP officer noted an odor of an alcoholic beverage emitting from

1 the vehicle. Respondent appeared tired and dazed; her eyes were red and glassy and her speech
2 was slow and slurred. She denied consuming alcohol, but stated that she took a prescription sleep
3 aid for insomnia. Respondent was asked to exit her vehicle; she stumbled and fell onto the dirt
4 embankment. Respondent was unable to perform the field sobriety tests as explained and
5 demonstrated by the officer. Respondent submitted two samples for a preliminary alcohol
6 screening test which was analyzed with a BAC of .25 and .23 percent. Respondent was placed
7 under arrest for driving under the influence of alcohol. During an inventory of Respondent's
8 vehicle, the officer found three bottles of wine, and one empty bottle. Respondent was placed
9 under arrest for driving under the influence and transported to a CHP office where she provided a
10 blood sample for testing. Respondent's BAC was found to be .23%.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(May 7, 2010 Criminal Conviction for DUI on November 6, 2009)**

13 15. Respondent has subjected her license to disciplinary action under sections 490 and
14 2761, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
15 related to the qualifications, functions, and duties of a registered nurse. The circumstances are as
16 follows:

17 a. On or about May 7, 2010, in a criminal proceeding entitled *People of the State*
18 *of California v. Kelli S. Garcia*, in San Diego County Superior Court, case number M100258,
19 Respondent was convicted on her plea of guilty of violating Vehicle Code section 23152,
20 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08% or more, a
21 misdemeanor. Respondent admitted and the court found true the enhancement that Respondent
22 was previously convicted of the same offense within 10 years, pursuant to Vehicle Code section
23 23540. An additional count of violating Vehicle Code section 23152, subdivision (a), driving
24 under the influence of alcohol, was dismissed pursuant to a plea agreement.

25 b. As a result of the conviction, on or about May 7, 2010, Respondent was
26 sentenced to five years summary probation; ordered to serve 96 hours in the custody of the
27 sheriff's work release program; and complete 30 days in the Program Service Program, with
28 credit for 11 days. Respondent was further ordered to complete a Multiple Conviction Program;

1 attend a MADD victim impact panel; pay \$2,418 in fees, fines, and restitution; and comply with
2 the terms of standard DUI probation.

3 c. The facts that led to the conviction are that on or about the morning of
4 November 6, 2009, a patrol officer with the California Highway Patrol (CHP) was dispatched to
5 investigate a 9-1-1 call of a disabled vehicle. The caller stated she witnessed a vehicle on the side
6 of the road and a female (Respondent) wearing hospital scrubs walking too close to the Interstate
7 5 freeway traffic lanes. By the time the officer located the vehicle, he observed Respondent
8 sitting in the driver's seat. As he approached her vehicle, Respondent got out and started
9 stumbling towards the freeway traffic. The officer ran towards her and motioned her away from
10 the traffic lanes. As the officer spoke to Respondent, he observed that her eyes were red and
11 watery, she was slurring her speech, and there was an odor of an alcoholic beverage on her
12 breath. Respondent stated that she was driving and ran out of gas. She said she had attempted to
13 call her husband but could not reach him. The officer observed Respondent try to use her cell
14 phone, pressing more than one number at a time, then putting the phone to her ear without
15 pressing "send." After four attempts, he asked Respondent to put her cell phone away.
16 Respondent stated she was on her way home from work. The officer advised Respondent she was
17 traveling in the wrong direction to be going home. Respondent stated she went to work, but had
18 not actually worked. When questioned, Respondent stated "It's complicated." Respondent
19 initially denied drinking or taking medication, however, she later stated she had consumed two
20 glasses of wine the evening before (stopping approximately eight hours prior to her arrest).
21 Respondent was unable to perform the field sobriety tests as explained and demonstrated by the
22 officer. As Respondent was being arrested, her husband arrived. During an inventory of
23 Respondent's vehicle, the CHP officer found a half-full bottle of wine behind the passenger seat,
24 and a partially filled bottle of prescription medications (Alprazolam) on the passenger seat. A
25 coffee cup, positively identified by Respondent's husband as belonging to her, was located on the
26 center divider 15 feet ahead of where Respondent's vehicle was parked. It was completely filled
27 with wine. Respondent was transported to jail where she provided a blood sample that was
28 analyzed with a BAC of .27%.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

3 16. Respondent has subjected her registered nurse license to disciplinary action under
4 section 2762, subdivision (b) of the Code in that on or about October 13, 2009, and November 6,
5 2009, as described in paragraphs 14 and 15, above, Respondent used alcoholic beverages to an
6 extent or in a manner that was potentially dangerous and injurious to herself, and to others in that
7 she operated a motor vehicle with significantly high blood alcohol concentrations.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

10 17. Respondent has subjected her registered nurse license to disciplinary action under
11 section 2762, subdivision (c) of the Code in that on or about December 14, 2009, and May 10,
12 2010, as described in paragraphs 14 and 15, above, Respondent was convicted of criminal
13 offenses involving the consumption and/or self-administration of alcohol, which constitutes
14 unprofessional conduct.

15 **PRAYER**

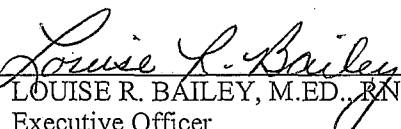
16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Registered Nursing issue a decision:

18 1. Revoking or suspending Registered Nurse License Number 518281, issued to Kelli
19 Sue Garcia;

20 2. Ordering Kelli Sue Garcia to pay the Board of Registered Nursing the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3;

23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 4/6/11

25 
LOUISE R. BAILEY, M.ED., RN
26 Executive Officer
27 Board of Registered Nursing
Department of Consumer Affairs
State of California
28 Complainant

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